

Part 7

Carson Smith Scholarships for Students with Special Needs Act

53A-1a-701 Title.

This part is known as the "Carson Smith Scholarships for Students with Special Needs Act."

Enacted by Chapter 35, 2005 General Session

53A-1a-702 Findings and purpose.

The Legislature finds that:

- (1) the state system of public education as established and maintained under the state constitution shall be open to all children of the state;
- (2) students with disabilities have special needs that merit educational alternatives which will allow students to learn in an appropriate setting and manner;
- (3) those needs may include teachers trained in special teaching methods, small class sizes, and special materials, equipment, and classroom environments;
- (4) parents are best equipped to make decisions for their children, including the educational setting that will best serve the interests and educational needs of their children;
- (5) the establishment of this scholarship program is justified on the basis of funding the special needs of students with disabilities as with other programs similarly funded by the state for people with disabilities;
- (6) children, parents, and families are the primary beneficiaries of the scholarship program authorized in this part and any benefit to private schools, sectarian or otherwise, is purely incidental;
- (7) the scholarship program authorized in this part is:
 - (a) enacted for the valid secular purpose of tailoring a student's education to that student's specific needs;
 - (b) neutral with respect to religion;
 - (c) provides limited assistance to citizens who are then able to direct their resources to religious and secular schools solely as a result of their genuine and independent private choices; and
 - (d) in accordance with the best interests of the taxpayers and citizens of the state to encourage educational opportunities; and
- (8) nothing in this part shall be construed as a basis for granting vouchers or tuition tax credits for any other students, with or without disabilities.

Enacted by Chapter 35, 2005 General Session

53A-1a-703 Definitions.

As used in this part:

- (1) "Assessment team" means a team consisting of:
 - (a) the student's parent or guardian;
 - (b) the student's private school classroom teacher;
 - (c) special education personnel from the student's school district; and
 - (d) if available, special education personnel from the private school at which the student is enrolled.
- (2) "Board" means the State Board of Education.

- (3) "Eligible private school" means a private school that meets the requirements of Section 53A-1a-705.
- (4) "Individualized Education Program" or "IEP" means a written statement for a student with a disability that is developed, reviewed, and revised in accordance with the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq.
- (5) "Local Education Agency" or "LEA" means:
 - (a) a school district; or
 - (b) a charter school.
- (6) "Preschool" means an education program for a student who:
 - (a) is age three, four, or five; and
 - (b) has not entered kindergarten.
- (7) "Scholarship student" means a student who receives a scholarship under this part.
- (8) "Value of the weighted pupil unit" means the amount established each year in statute that is multiplied by the number of weighted pupil units to yield the funding level for the basic state-supported school program.

Amended by Chapter 374, 2015 General Session

53A-1a-704 Scholarship program created -- Qualifications.

- (1) The Carson Smith Scholarship Program is created to award scholarships to students with disabilities to attend a private school.
- (2) To qualify for a scholarship:
 - (a) the student's custodial parent or legal guardian shall reside within Utah;
 - (b) the student shall have one or more of the following disabilities:
 - (i) an intellectual disability;
 - (ii) a hearing impairment;
 - (iii) a speech or language impairment;
 - (iv) a visual impairment;
 - (v) a serious emotional disturbance;
 - (vi) an orthopedic impairment;
 - (vii) autism;
 - (viii) traumatic brain injury;
 - (ix) other health impairment;
 - (x) specific learning disabilities; or
 - (xi) a developmental delay, provided the student is at least three years of age, pursuant to Subsection (2)(c), and is younger than eight years of age;
 - (c) the student shall be at least three years of age before September 2 of the year in which admission to a private school is sought and under 19 years of age on the last day of the school year as determined by the private school, or, if the individual has not graduated from high school, will be under 22 years of age on the last day of the school year as determined by the private school; and
 - (d) except as provided in Subsection (3), the student shall:
 - (i) be enrolled in a Utah public school in the school year prior to the school year the student will be enrolled in a private school;
 - (ii) have an IEP; and
 - (iii) have obtained acceptance for admission to an eligible private school.
- (3) The requirements of Subsection (2)(d) do not apply in the following circumstances:

- (a) the student is enrolled or has obtained acceptance for admission to an eligible private school that has previously served students with disabilities; and
 - (b) an assessment team is able to readily determine with reasonable certainty:
 - (i) that the student has a disability listed in Subsection (2)(b) and would qualify for special education services, if enrolled in a public school; and
 - (ii) for the purpose of establishing the scholarship amount, the appropriate level of special education services which should be provided to the student.
- (4)
- (a) To receive a full-year scholarship under this part, a parent of a student shall submit to the LEA where the student is enrolled an application on or before the August 15 immediately preceding the first day of the school year for which the student would receive the scholarship.
 - (b) The board may waive the full-year scholarship deadline described in Subsection (4)(a).
 - (c) An application for a scholarship shall contain an acknowledgment by the parent that the selected school is qualified and capable of providing the level of special education services required for the student.
- (5)
- (a) The scholarship application form shall contain the following statement:
 - "I acknowledge that:
 - (1) A private school may not provide the same level of special education services that are provided in a public school;
 - (2) I will assume full financial responsibility for the education of my scholarship student if I accept this scholarship;
 - (3) Acceptance of this scholarship has the same effect as a parental refusal to consent to services pursuant to Section 614(a)(1) of the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq.; and
 - (4) My child may return to a public school at any time."
 - (b) Upon acceptance of the scholarship, the parent assumes full financial responsibility for the education of the scholarship student.
 - (c) Acceptance of a scholarship has the same effect as a parental refusal to consent to services pursuant to Section 614(a)(1) of the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq.
 - (d) The creation of the scholarship program or granting of a scholarship does not:
 - (i) imply that a public school did not provide a free and appropriate public education for a student; or
 - (ii) constitute a waiver or admission by the state.
- (6)
- (a) A scholarship shall remain in force for three years.
 - (b) A scholarship shall be extended for an additional three years, if:
 - (i) the student is evaluated by an assessment team; and
 - (ii) the assessment team determines that the student would qualify for special education services, if enrolled in a public school.
 - (c) The assessment team shall determine the appropriate level of special education services which should be provided to the student for the purpose of setting the scholarship amount.
 - (d) A scholarship shall be extended for successive three-year periods as provided in Subsections (6)(a) and (b):
 - (i) until the student graduates from high school; or
 - (ii) if the student does not graduate from high school, until the student is age 22.

- (7) A student's parent, at any time, may remove the student from a private school and place the student in another eligible private school and retain the scholarship.
- (8) A scholarship student may not participate in a dual enrollment program pursuant to Section 53A-11-102.5.
- (9) The parents or guardians of a scholarship student have the authority to choose the private school that will best serve the interests and educational needs of that student, which may be a sectarian or nonsectarian school, and to direct the scholarship resources available for that student solely as a result of their genuine and independent private choices.
- (10)
 - (a) An LEA shall notify in writing the parents or guardians of students enrolled in the LEA who have an IEP of the availability of a scholarship to attend a private school through the Carson Smith Scholarship Program.
 - (b) The notice described under Subsection (10)(a) shall:
 - (i) be provided no later than 30 days after the student initially qualifies for an IEP;
 - (ii) be provided annually no later than February 1 to all students who have an IEP; and
 - (iii) include the address of the Internet website maintained by the board that provides prospective applicants with detailed program information and application forms for the Carson Smith Scholarship Program.
 - (c) An LEA or school within an LEA that has an enrolled student who has an IEP shall post the address of the Internet website maintained by the board that provides prospective applicants with detailed program information and application forms for the Carson Smith Scholarship Program on the LEA's or school's website, if the LEA or school has one.

Amended by Chapter 374, 2015 General Session

53A-1a-705 Eligible private schools.

- (1) To be eligible to enroll a scholarship student, a private school shall:
 - (a) have a physical location in Utah where the scholarship students attend classes and have direct contact with the school's teachers;
 - (b)
 - (i)
 - (A) obtain an audit and report from a licensed independent certified public accountant that conforms with the following requirements:
 - (I) the audit shall be performed in accordance with generally accepted auditing standards;
 - (II) the financial statements shall be presented in accordance with generally accepted accounting principles; and
 - (III) the audited financial statements shall be as of a period within the last 12 months; or
 - (B) contract with a licensed independent certified public accountant to perform an agreed upon procedure as follows:
 - (I) the agreed upon procedure shall be to determine that the private school has adequate working capital to maintain operations for the first full year; and
 - (II) working capital shall be calculated by subtracting current liabilities from current assets; and
 - (ii) submit the audit report or report of the agreed upon procedure to the board when the private school applies to accept scholarship students;
 - (c) comply with the antidiscrimination provisions of 42 U.S.C. Sec. 2000d;
 - (d) meet state and local health and safety laws and codes;

- (e) disclose to the parent of each prospective student, before the student is enrolled, the special education services that will be provided to the student, including the cost of those services;
 - (f)
 - (i) administer an annual assessment of each scholarship student's academic progress;
 - (ii) report the results of the assessment to the student's parent; and
 - (iii) make the results available to the assessment team evaluating the student pursuant to Subsection 53A-1a-704(6);
 - (g) employ or contract with teachers who:
 - (i) hold baccalaureate or higher degrees;
 - (ii) have at least three years of teaching experience in public or private schools; or
 - (iii) have the necessary special skills, knowledge, or expertise that qualifies them to provide instruction:
 - (A) in the subjects taught; and
 - (B) to the special needs students taught;
 - (h) require the following individuals to submit to a nationwide, fingerprint-based criminal background check and ongoing monitoring, in accordance with Section 53A-15-1503, as a condition for employment or appointment, as authorized by the Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248 :
 - (i) an employee who does not hold a current Utah educator license issued by the board under Title 53A, Chapter 6, Educator Licensing and Professional Practices Act;
 - (ii) a contract employee; and
 - (iii) a volunteer who is given significant unsupervised access to a student in connection with the volunteer's assignment; and
 - (i) provide to parents the relevant credentials of the teachers who will be teaching their students.
- (2) A private school is not eligible to enroll scholarship students if:
- (a) the audit report submitted under Subsection (1)(b) contains a going concern explanatory paragraph; or
 - (b) the report of the agreed upon procedure submitted under Subsection (1)(b) shows that the private school does not have adequate working capital to maintain operations for the first full year, as determined under Subsection (1)(b).
- (3) A home school is not eligible to enroll scholarship students.
- (4) Residential treatment facilities licensed by the state are not eligible to enroll scholarship students.
- (5) A private school intending to enroll scholarship students shall submit an application to the board by May 1 of the school year preceding the school year in which it intends to enroll scholarship students.
- (6) The board shall:
- (a) approve a private school's application to enroll scholarship students, if the private school meets the eligibility requirements of this section; and
 - (b) make available to the public a list of the eligible private schools.
- (7) An approved eligible private school that changes ownership shall submit a new application to the board and demonstrate that it continues to meet the eligibility requirements of this section.

Amended by Chapter 44, 2016 General Session

53A-1a-706 Scholarship payments.

(1)

- (a) Scholarships shall be awarded by the board subject to the availability of money appropriated by the Legislature for that purpose.
- (b) The Legislature shall annually appropriate money to the board from the General Fund to make scholarship payments.
- (c) Beginning with the 2013-14 school year, the Legislature shall annually increase the amount of money appropriated under Subsection (1)(b) by an amount equal to the product of:
 - (i) the average scholarship amount awarded as of December 1 in the previous year; and
 - (ii) the product of:
 - (A) the number of students in preschool through grade 12 in public schools statewide who have an IEP on December 1 of the previous year; and
 - (B) 0.0007.
- (d) If the number of scholarship students as of December 1 in any school year equals or exceeds 7% of the number of students in preschool through grade 12 in public schools statewide who have an IEP as of December 1 in the same school year, the Public Education Appropriations Subcommittee shall study the requirement to increase appropriations for scholarship payments as provided in this section.
- (e)
 - (i) If money is not available to pay for all scholarships requested, the scholarships shall be allocated on a random basis except that preference shall be given to students who received scholarships in the previous school year.
 - (ii) If money is insufficient in a school year to pay for all the continuing scholarships, new scholarships may not be awarded during that school year and the money available for scholarships shall be prorated among the eligible students who received scholarships in the previous year.
- (2) Full-year scholarships shall be awarded in the following amounts:
 - (a) for a student who received an average of 180 minutes per day or more of special education services in a public school before transferring to a private school, an amount not to exceed the lesser of:
 - (i) the value of the weighted pupil unit multiplied by 2.5; or
 - (ii) the private school tuition and fees; and
 - (b) for a student who received an average of less than 180 minutes per day of special education services in a public school before transferring to a private school, an amount not to exceed the lesser of:
 - (i) the value of the weighted pupil unit multiplied by 1.5; or
 - (ii) the private school tuition and fees.
- (3) The scholarship amount for a student enrolled in a half-day kindergarten or part-day preschool program shall be the amount specified in Subsection (2)(a) or (b) multiplied by .55.
- (4)
 - (a) The scholarship amount for a student who receives a waiver under Subsection 53A-1a-704(3) shall be based upon the assessment team's determination of the appropriate level of special education services to be provided to the student.
 - (b)
 - (i) If the student requires an average of 180 minutes per day or more of special education services, a full-year scholarship shall be equal to the amount specified in Subsection (2)(a).
 - (ii) If the student requires less than an average of 180 minutes per day of special education services, a full-year scholarship shall be equal to the amount specified in Subsection (2)(b).
 - (iii) If the student is enrolled in a half-day kindergarten or part-day preschool program, a full-year scholarship is equal to the amount specified in Subsection (3).

- (5)
- (a) Except as provided in Subsection (5)(b), upon review and receipt of documentation that verifies a student's admission to, or continuing enrollment and attendance at, a private school, the board shall make scholarship payments quarterly in four equal amounts in each school year in which a scholarship is in force.
 - (b) In accordance with board rule, the board may make a scholarship payment before the first quarterly payment of the school year, if a private school requires partial payment of tuition before the start of the school year to reserve space for a student admitted to the school.
- (6) A parent of a scholarship student shall notify the board if the student does not have continuing enrollment and attendance at an eligible private school.
- (7) Before scholarship payments are made, the board shall cross-check enrollment lists of scholarship students, LEAs, and youth in custody to ensure that scholarship payments are not erroneously made.
- (8)
- (a) Scholarship payments shall be made by the board by individual warrant made payable to the student's parent and mailed by the board to the private school. The parent shall restrictively endorse the warrant to the private school for deposit into the account of the private school.
 - (b) A person, on behalf of a private school, may not accept a power of attorney from a parent to sign a warrant referred to in Subsection (8)(a), and a parent of a scholarship student may not give a power of attorney designating a person, on behalf of a private school, as the parent's attorney-in-fact.

Amended by Chapter 374, 2015 General Session

53A-1a-707 Board to make rules.

In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board shall make rules consistent with this part establishing:

- (1) the eligibility of students to participate in the scholarship program; and
- (2) the application process for the scholarship program.

Amended by Chapter 382, 2008 General Session

53A-1a-708 Enforcement and penalties.

- (1)
- (a) The board shall require a private school to submit a signed affidavit assuring the private school will comply with the requirements of this part.
 - (b) If a school fails to submit a signed affidavit within 30 days of receiving notification that the school is an approved private school to receive the Carson Smith Scholarship, the board may:
 - (i) deny the private school permission to enroll scholarship students; and
 - (ii) interrupt disbursement of or withhold scholarship payments.
- (2) The board may investigate complaints and convene administrative hearings for an alleged violation of this part.
- (3) Upon a finding that this part was violated, the board may:
- (a) deny a private school permission to enroll scholarship students;
 - (b) interrupt disbursement of or withhold scholarship payments; or
 - (c) issue an order for repayment of scholarship payments fraudulently obtained.

Amended by Chapter 374, 2015 General Session

53A-1a-709 Limitation on regulation of private schools.

Nothing in this part grants additional authority to any state agency or LEA to regulate private schools except as expressly set forth in this part.

Amended by Chapter 374, 2015 General Session

53A-1a-710 Review by Legislative Auditor General.

The Legislative Auditor General shall conduct a review and issue a report on the Carson Smith Scholarship Program after the conclusion of the 2006-07 school year.

Enacted by Chapter 35, 2005 General Session